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CRIMINAL LAW — MANSLAUGHTER — CULPABLE NEGLIGENCE

A taxi driver was killed when the defendant's vehicle collided with the rear of his cab. The defendant was then tried and convicted of manslaughter for operating his automobile in a culpably negligent manner. *Held*, reversed: evidence that it was night, that there was excessive speed with an absence of skid marks, and that the defendant was under the influence of liquor, in the absence of other circumstances was inconclusive proof of such a reckless and grossly careless disregard of the public welfare as is required to sustain the conviction. *Fowlkes v. State*, 100 So.2d 826 (Fla. App. 1957).

The courts are not in accord as to what constitutes "culpable negligence" in the operation of an automobile. Mississippi has defined it as "such gross or criminal negligence as evinces a wanton or reckless and utter disregard of the safety and lives of others."¹ Florida has said that it is "a heedless indifference to the safety and consequences of his act and an indifference to the rights of others."² A few jurisdictions such as North Carolina have termed culpable negligence as an "*intentional* willful, or wanton violation of statutory or common law rules."³

A number of courts have been less extreme in their definitions. For example one of these has termed culpable negligence as "*disregard* by the accused of the consequences of his act and an indifference to the rights of others,"⁴ and another as "that recklessness or *carelessness* which imports a thoughtless disregard of the consequences or a heedless indifference to the safety and rights of others."⁵ The view accepted by the majority, however, is that before criminal liability can attach, it *must* be of a higher degree than is required to establish negligence in civil actions.⁶ Because of the

1. *Wells v. State*, 162 Miss. 617, 623, 139 So. 859, 860 (1932).
 2. *State v. Miller*, 75 So.2d 312, 313 (Fla. 1954).
 3. *State v. Bournais*, 240 N.C. 311, 314, 82 S.E.2d 115, 117 (1954).
 4. *People v. Sticht*, 139 N.Y.S.2d 667, 669 (County Ct. 1955).
 5. *State v. Becker*, 241 N.C. 321, 328, 85 S.E.2d 327, 332 (1955).
 6. *Ala.*: *Crulette v. State*, 25 Ala. App. 179, 142 So. 775 (1932); *Ariz.*: *State v. Morf*, 80 Ariz. 220, 295 P.2d 842 (1956); *Cal.*: *People v. Lloyd*, 97 Cal. App. 644, 275 Pac. 1010 (1927); *Colo.*: *Trujillo v. People*, 133 Colo. 186, 292 P.2d 980 (1956); *Fla.*: *Cannon v. State*, 91 Fla. 214, 107 So. 360 (1926); *Ga.*: *Crocker v. State*, 57 Ga. App. 895, 197 S.E. 92 (1938); *Me.*: *State v. Ela*, 136 Me. 303, 8 A.2d 589 (1939); *Miss.*: *Shows v. State*, 175 Miss. 604, 168 So. 862 (1936); *Mont.*: *State v. Powell*, 114 Mont. 571, 138 P.2d 949 (1943); *N.Y.*: *People v. Pace*, 220 App. Div. 495, 221 N.Y. Supp. 778 (1927); *N.J.*: *State v. Gooze*, 14 N.J. Super. 277, 81 A.2d 811 (1951); *Pa.*: *Commonwealth v. Aurick*, 342 Pa. 282, 19 A.2d 920 (1941); *S.C.*: *State v. Bennett*, 218 S.C. 415, 63 S.E.2d 57 (1952); *Tenn.*: *Weaver v. State*, 185 Tenn. 276, 206 S.W.2d 293 (1947); *Utah*: *State v. Clark*, 118 Utah 617, 223 P.2d 184 (1950); *Va.*: *Bell v. Commonwealth*, 170 Va. 597, 195 S.E. 675 (1938); *Wis.*: *State v. Whalley* 210 Wis. 157, 245 N.W. 93 (1932); *Wyo.*: *State v. McComb*, 33 Wyo. 346, 239 Pac. 526 (1925).

numerous automobile tragedies caused by culpable negligence, many states have enacted manslaughter statutes⁷ in an effort to curb the frequency of such occurrences. The degree of proof required to sustain such a conviction under them varies,⁸ and is resolved by the facts and circumstances of each particular case.⁹

It is difficult in these manslaughter cases to determine from the courts' definitions of "culpable negligence,"¹⁰ the amount of proof necessary to sustain the conviction.¹¹ It has been said, "It is the doctrine of implied intent . . . which plays a major part in the criminal law concerning automobiles."¹² Some states,¹³ including Florida,¹⁴ have adhered to this doctrine by referring to culpable negligence as "that reckless indifference to the rights of others, which is equivalent to an *intentional* violation of them."¹⁵ (Emphasis added.) Others, such as New York, which refer to it merely as *disregard* of the consequences, have not gone quite so far.¹⁶ It appears

7. A number of states have divided their manslaughter statutes into degrees. Typical of these statutes is OKLA. STAT. § 716 (1951)—Manslaughter second degree: "Every killing of one human being by the act procurement, or culpable negligence of another, which is not murder or first degree manslaughter, nor excusable nor justifiable homicide, is second degree manslaughter." Other states have enacted manslaughter statutes of a more general nature such as New York; N. Y. PENAL LAW § 1053 (a) (1958) which provides: "a person who operates any vehicle in a reckless or culpably negligent manner whereby a human being is killed is guilty of criminal negligence." Other statutes on this subject are: ARK. GEN. STAT. ANN. § 41-2209 (1949); FLA. STAT. § § 782.07, 860.01 (1957); IDAHO CODE § 18-114 (1957); KAN. GEN. STAT. ANN. § § 21-420 (1949); UTAH CODE ANN. § 76-1-20 (1957).

8. *State v. Adams*, 359 Mo. 845, 224 S.W.2d 54, 58 (1949) (where death resulted from a collision at an intersection, the court held that "defendant's intoxication and his failure to stop at a stop sign were not decisive factors to convict him of involuntary manslaughter, but could be considered with other factors in determining his guilt under the circumstances"). In *People v. Gardner*, 255 App. Div. 683, 687, 8 N.Y.S.2d 917, 919 (1939) the court said: "the test is not satisfied by proof of excessive speed amounting to negligence but by proof of that character—if such was the case and other circumstances which, as we have seen, together must show a reckless disregard by the accused of the consequences of his conduct and his indifference to the rights of others."

9. *State v. Murphy*, 324 Mo. 183, 188 23 S.W.2d 136, 138 (1929). In this case an instruction was approved by the court which defined "culpable negligence" as follows:

The omission on the part of one person to do some act under given circumstances which an ordinary careful and prudent person would do under like circumstances, showing on the part of such person a careless or reckless disregard for human life or limb, or the doing of some act under given circumstances which an ordinarily careful and prudent person under like circumstances would do, showing on the part of such person a careless or reckless disregard for human life or limb, by reason of which omission or action another person is directly endangered in life or bodily safety.

10. *State v. Miller*, 75 So.2d 312,313 (Fla. 1954); *Wells v. State*, 163 Miss. 617-623, 132 So. 859, 860 (1932); *State v. Becker*, 241 N.C. 321,323, 85 S.E.2d 327,332 (1955); *State v. Bourmais*, 240 N.C. 311,314, 82 S.E.2d 115,117 (1954); *People v. Sticht*, 139 N.Y.S.2d 667, 669 (County Ct. 1955).

11. *People v. Gardner*, 255 App. Div. 683,687, 8 N.Y.S.2d 917,919 (1939); *State v. Adams*, 359 Mo. 845,852, 224 S.W.2d 54,57 (1949).

12. 16 N.Y.U.L.Q. Rev. 290 (1939).

13. *State v. Adams*, 359 Mo. 845,851, 224 S.W.2d 54,57 (1949); *State v. Blankenship*, 229 N.C. 589, 595, 50 S.E.2d 727,729 (1948).

14. *Miller v. State*, 75 So.2d 312,313 (Fla. 1954).

15. *Id.* at 313.

16. *People v. Sticht*, 139 N.Y.S.2d 667,669 (County Ct. 1955).

from these cases that before criminal liability can attach, it *must* be shown with more than reasonable certainty that a homicide was not improbable under all the facts existent at the time of death.

In the instant case, the court applied the prevailing Florida rule¹⁷ as to what must be shown to sustain a manslaughter conviction based on culpable negligence in the operation of an automobile. It noted that excessive speed *alone* is not *necessarily* culpable negligence, but if coupled with other circumstances, it could be sufficient to show a reckless disregard for the safety of others sufficient to sustain a conviction.¹⁸ The court also pointed out that the jury was entitled to consider evidence of the defendant's intoxication since such a condition could shed light on the defendant's recklessness.¹⁹ In reversing the conviction the court stated, "the evidence as a whole was inconclusive because of the absence of evidence of other circumstances."²⁰ From this decision it is apparent that the doctrine of "implied intent" is once again being adhered to by a Florida court.

A rather extreme position has been taken by the court in ruling as a matter of law that the evidence in this case was insufficient to sustain the conviction. As the dissent pointed out, reasonable inferences *were* present to support the finding of the jury. It is without question that an automobile in the hands of a reckless person can be as lethal as the most dangerous weapon. On the basis of *public policy*, and in view of the ever increasing number of automobile fatalities, it might be wise for the courts to take a firmer stand regarding those individuals who take the lives of others by the gross misuse of our modern highways.

GEORGE NACHWALTER

17. In *Savage v. State*, 152 Fla. 367,369, 11 So.2d 778,779 (1943) the court stated the prevailing rule as:

The 'culpable negligence' required to sustain a manslaughter charge must be of a gross and flagrant character, evincing reckless disregard of human life or of the safety of persons exposed to its dangerous effects; or that entire want of care which would raise the presumption of indifference to consequences; or such wantonness or recklessness or grossly careless disregard of the safety and welfare of the public, or that reckless indifference to the rights of others, which is equivalent to an intentional violation of them.

This definition has been followed verbatim in *Hunt v. State*, 87 So.2d 584,585 (Fla. 1956), and *Preston v. State*, 56 So.2d 543,544 (Fla. 1952).

18. *Accord*, *Preston v. State*, 56 So.2d 543,544 (Fla. 1952).

19. *Accord*, *Smith v. State*, 65 So. 2d 303,306 (Fla. 1953).

20. *Fowlkes v. State*, 100 So.2d 826,830 (Fla. App. 1957). The court pointed out that other circumstances such as:

The nature of the intersection and the lighting conditions there, the traffic at the intersection at the time, the location and visibility of the traffic control light, the color of the traffic light at the time of the collision, the degree of visibility of the taxi cab, whether its lights were on, what lane it was in, what it was doing, and as to whether the defendant's car decelerated or made any other effort to avoid the accident, and if so, what and to what extent

should have been presented, if not in whole at least in part.